No. 85-2154

Supreme Court, U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1986

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ARMSTRONG RUBBER COMPANY AND COOPER TIRE & RUBBER COMPANY, PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the court of appeals correctly held that a post-judgment motion filed by petitioners was not a motion under Rule 59(e) of the Rules of the United States Court of International Trade and that a notice of appeal filed prior to the motion was therefore sufficient to give the court of appeals jurisdiction.

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

### OPINIONS BELOW

The April 7, 1986, order of the court of appeals (Pet. App. 1a-2a) remanding this case to the United States Court of International Trade (CIT) is unreported. The court of appeals' order of January 31, 1986 (Pet. App. 8a-9a) denying petitioners' motion to dismiss the appeal is also unreported. The CIT's opinion of August 8, 1985 (Pet. App. 4a-7a) is reported at 614 F. Supp. 1252. The CIT's denial of petitioner's postjudgment motion (App., *infra*, 1a) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on April 7, 1986. The petition for a writ of certiorari was filed on June 30, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. In July 1984, petitioners filed a petition with the United States International Trade Commission (the Commission) pursuant to the antidumping statute, 19 U.S.C. (& Supp. II) 1673 *et seq.*, seeking the imposition of antidumping duties on certain imported Korean automobile tires. Specifically, their petition alleged that new imported radial ply tires were being sold in the United States at less than fair value, causing actual or potential injury to the domestic tire industry. In September 1984, the Commission determined that there was no reasonable indication that the domestic automobile tire industry was materially injured, or threatened with material injury, by reason of those imported tires. See *Radial Ply Tires for Passenger Cars from the Republic of Korea*, Investigation No. 731-TA-200 (Preliminary), USITC Pub. 1572, 49 Fed. Reg. 36712 (1984).

Petitioners appealed the Commission's negative determination to the CIT, requesting a judgment on the administrative record. On August 8, 1985, the CIT issued an opinion stating that the Commission had failed to apply the correct standard in assessing whether there was a reasonable indication of material injury or threat of material injury and issued an order reversing the Commission's determination and remanding the case to the Commission for issuance of a determination consistent with the court's opinion (Pet. App. 4a-7a).

On August 15, 1985, the Commission filed a notice of appeal. Subsequently, on August 19, 1985, petitioners filed a motion (Pet. App. 44a-50a) requesting the CIT to amend its judgment to require that the Commission issue a determination consistent with the court's opinion "as soon as possible but in no event later than * * * 32 days after the entry of [the] Court's Opinion and Order [or] at the very least * * * to require the [Commission] to abide by the

aforementioned deadline" (*id.* at 44a). In the text of their motion (*ibid.*), petitioners alleged that the motion was made pursuant to Ct. Int'l Trade R. 59(e).[1]

On September 18, 1985, the CIT denied petitioners' motion (App., *infra*, 1a). In its order denying the motion, the CIT stated that the motion was being "treated as a motion under Rule 60 of the Rules of this Court" (*ibid.*).[2] Relying on the CIT's characterization of the motion as a Ct. Int'l Trade R. 60 motion, the Commission did not file a second notice of appeal.[3]

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[1]Ct. Int'l Trade R. 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than 30 days after the entry of the judgment." That rule is patterned on Fed. R. Civ. P. 59(e) with one crucial difference: the time period under Fed. R. Civ. P. 59(e) is 10 days, not 30 days. See generally 28 U.S.C. 2645(b), 2646 (postjudgment motions in CIT proceedings for retrial, rehearing, or amending judgment must be filed within 30 days after entry of judgment).

[2]Ct. Int'l Trade R. 60 is patterned on Fed. R. Civ. P. 60 but is not identical to it. Compare Pet. App. 17a-18a (quoting Ct. Int'l Trade R. 60) with Pet. App. 14a-15a (quoting Fed. R. Civ. P. 60). Both rules apply to relief from the judgment for clerical errors (Rule 60(a)) or on grounds, inter alia, of mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud (Rule 60(b)). One major difference between the rules is that all motions made under Ct. Int'l Trade R. 60(b) must be served and filed not more than 30 days after the entry of the judgment, while Fed. R. Civ. P. 60(b) requires that all motions be made "within a reasonable time" and that certain specified motions be made within one year. We note that Ct. Int'l Trade R. 60(b) has been amended, effective October 1, 1986, to make the applicable time periods the same as those under Fed. R. Civ. P. 60(b).

[3]Under Fed. R. App. P. 4(a)(4), which is applicable to the Federal Circuit (see Pet. App. 10a-12a), if a timely Rule 59(e) motion to alter or amend the judgment is filed in the district court then "the time for appeal for all parties shall run from the entry of the order * * * granting or denying * * * such motion." The rule further provides that a notice of appeal filed before the disposition of such motion "shall have no effect" and that "[a] new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of [such] motion * * *." Neither Fed. R. App. P. 4(a)(4) nor any circuit rule of the Federal Circuit refers expressly to Ct. Int'l Trade R. 59(e). The court below appears to have assumed that a motion properly filed under Ct. Int'l Trade R. 59(e) would have the same effect as a motion under Fed. R. Civ. P. 59(e), but it did not have to reach that question.

2. On December 19, 1985, petitioners filed a motion to dismiss the appeal. In their motion, petitioners alleged that the court of appeals did not have jurisdiction to entertain the appeal because the Commission's notice of appeal, filed four days prior to petitioners' August 19, 1985 motion, was without effect pursuant to Fed. R. App. P. 4(a)(4) (set out at Pet. App. 10a) and Fed. Cir. R. 10(a) (set out at Pet. App. 12a). The court of appeals denied petitioners' motion on January 31, 1986 (*id.* at 8a-9a). The court reasoned that petitioners had not shown that the CIT was in error when it characterized petitioners' postjudgment motion as a motion under Ct. Int'l Trade R. 60 rather than as one under Ct. Int'l Trade R. 59(e). Accordingly, the court had jurisdiction, since a motion under Ct. Int'l Trade R. 60 does not nullify a previously filed notice of appeal.

On March 6, 1986, the Commission requested the court of appeals to vacate the CIT's decision in this case and to remand the case to the CIT for reconsideration in light of a recent intervening Federal Circuit decision, *American Lamb Co.* v. *United States*, 785 F.2d 994 (1986).[4] Petitioners opposed the Commission's motion and renewed their argument that the court of appeals was without jurisdiction to decide the appeal. In their opposition, petitioners cited two Fifth Circuit en banc cases[5] for the proposition that the court of appeals did not have jurisdiction over the appeal. Petitioners repeated these arguments in a later submission while the Commission's motion to remand was pending. On

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[4]Previously, on November 23, 1985, the court of appeals had stayed its consideration of the Commission's appeal pending the resolution of a controlling point of substantive law that was being decided in an interlocutory appeal in *American Lamb* (see Pet. App. 1a-2a).

[5]*Harcon Barge Co.* v. *D & G Boat Rentals, Inc.*, 784 F.2d 665 (5th Cir. 1986), petition for cert. pending *sub nom. Southern Pacific Transportation Co.* v. *Harcon Barge Co.*, No. 85-2015; and *Willie* v. *Continental Oil Co.*, 784 F.2d 706 (5th Cir. 1986).

April 7, 1986, the court of appeals rejected without comment petitioners' jurisdictional arguments and remanded the case to the CIT (Pet. App. 1a-2a).

## ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. In any event, the decision below turns on the interpretation of rules of a specialized court (rules patterned after but critically different from the corresponding Civil Rules) and is of no general importance. Accordingly, review by this Court is not warranted.

1. Petitioners contend (Pet. 8-13) that the Federal Circuit's decision in this case conflicts with the Fifth Circuit's en banc decisions in *Harcon Barge Co., Inc.* v. *D & G Boat Rentals, Inc.*, 784 F.2d 665 (5th Cir. 1986) (set out at Pet. App. 22a-33a), petition for cert. pending *sub nom. Southern Pacific Transportation Co.* v. *Harcon Barge*, No. 85-2015, and *Willie* v. *Continental Oil Co.*, 784 F.2d 706 (5th Cir. 1986) (set out at Pet. App. 34a-36a). This claim of a conflict is erroneous. *Harcon Barge* and *Willie* involved Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure; the present case involves Rules 59(e) and 60 of the Court of International Trade. The two CIT Rules differ in critical respects from the corresponding Federal Rules of Civil Procedure. The only issue in this case, therefore, is whether the Federal Circuit correctly interpreted the CIT's own unique rules.

In *Harcon Barge*, the Fifth Circuit examined whether a postjudgment motion to relieve the moving defendants from liability for costs, filed within 10 days of the entry of a district court's judgment, was a motion pursuant to Fed. R. Civ. P. 59(e) or Fed. R. Civ. P. 60(b). This inquiry was necessary because, while the filing of a notice of appeal generally divests the district court of jurisdiction over a case

and gives that jurisdiction to the court of appeals, Rule 4(a)(4) of the Federal Rules of Appellate Procedure (set out at Pet. App. 10a) provides that a notice of appeal is nullified by the timely filing of a Fed. R. Civ. P. 59(e) motion. A Fed. R. Civ. P. 60 motion, by contrast, does not affect a previously filed notice of appeal and does not disturb the jurisdiction of the court of appeals. See generally *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (per curiam).[6] The Fifth Circuit, sitting en banc, held that all postjudgment motions to alter or amend the judgment—except motions involving purely clerical errors—that are filed within 10 days of entry of the judgment shall be treated as Fed. R. Civ. P. 59(e) motions for purposes of Fed. R. App. P. 4(a)(4). Under the court's holding, "Rule 60(b) relief may be invoked * * * only for the causes specifically stated in the rule and * * * only after ten days following entry of judgment" (Pet. App. 31a). The court then applied its holding in the two cases, ruling that the motion for relief from costs (*Harcon Barge*) and the motion to amend the judgment to reflect a stipulation of the parties (*Willie*) were both Fed. R. Civ. P. 59(e) motions, since both were filed within 10 days of the judgment. The previously filed notices of appeal were therefore nullified and the appeals dismissed.

The court in *Harcon Barge* based its decision on the need for a "bright line" standard (Pet. App. 25a-26a).[7] It emphasized that while Fed. R. Civ. P. 59(e) and 60 "provide

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[6]Since a Fed. R. Civ. P. 60(b) motion does not affect the finality of the district court's judgment, a Fed. R. Civ. P. 60(b) motion filed after the notice of appeal may only be granted with leave of the court of appeals. It has been held, however, that a district court, without leave of the court of appeals, may entertain and *deny* a Fed. R. Civ. P. 60(b) motion even after a timely notice of appeal is filed. See, *e.g.*, *Venen* v. *Sweet*, 758 F.2d 117, 123 (3d Cir. 1985).

[7]While not declaring that a bright line test would always be used, other circuits have adopted similar approaches. See, *e.g.*, *Rankin* v. *Heckler*, 761 F.2d 936, 942 (3d Cir. 1985) (footnote omitted) ("Regardless how it is styled, a motion filed within ten days of entry of judgment

overlapping relief," Fed. R. Civ. P. 59(e) motions must be filed within 10 days while motions under Fed. R. Civ. P. 60(a) and (b) may be filed at a later date (Pet. App. 28a).

The Federal Circuit's decision in this case is based not on the Federal Rules of Civil Procedure but on the CIT's rules. The CIT is a specialized federal court, not a federal district court,[8] and the Federal Rules of Civil Procedure are therefore not directly applicable to the CIT's proceedings.[9] Whereas the Federal Rules of Civil Procedure are promulgated by this Court, pursuant to 28 U.S.C. 2072, and apply to all federal district courts (Fed. R. Civ. P. 1), Congress has instead given the CIT the power to promulgate its own rules of procedure. See 28 U.S.C. 2633(b).[10]

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questioning the correctness of a judgment may be treated as a motion to alter or amend the judgment under Rule 59(e)."); *Western Industries, Inc.* v. *Newcor Canada, Ltd.*, 709 F.2d 16, 17 (7th Cir. 1983) (where issue was whether motion was one under Fed. R. Civ. P. 59(e) or 60(b), court stated that "[p]ost-judgment motions filed within 10 days should where possible be construed as Rule 59(e) motions to avoid otherwise endless hassles over proper characterization").

[8]The CIT was created by the Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727 *et seq.*, as the successor to the Customs Court.

[9]Ct. Int'l Trade R. 1 provides that the CIT "*may* refer for guidance to the rules of other courts" (emphasis added). The CIT has looked to the Federal Rules of Civil Procedure for guidance where the rules in question are identical or very similar to the corresponding CIT rules. See, *e.g.*, *United States* v. *F.A.G. Bearings Corp.*, 615 F. Supp. 562, 566 n.4 (Ct. Int'l Trade 1984); *Vivitar Corp.* v. *United States*, 585 F. Supp. 1415, 1417 (Ct. Int'l Trade 1984).

[10]Appeals from the CIT to the Federal Circuit are governed by the Federal Rules of Appellate Procedure and by the Federal Circuit's local rules. Those local rules provide that the CIT shall be considered a district court for purposes of the Federal Rules of Appellate Procedure. See Introduction, Rules of the United States Court of Appeals for the Federal Circuit Supplementing the Federal Rules of Appellate Procedure (set out at Pet. App. 11a). Moreover, Fed. Cir. R. 10(a) states that "[a] notice of appeal shall be filed in the manner and within the time prescribed by [Fed. R. App. P.] 4(a)" (Pet. App. 12a).

The bright line test adopted by the Fifth Circuit, which was based on the 10 day limitation found in Fed. R. Civ. P. 59(e), has no applicability in the context of the CIT's rules, which contain a 30 day time limit for bringing *both* Ct. Int'l Trade R. 59(e) motions and Ct. Int'l Trade R. 60(b) motions. A 10 day bright line rule would be inappropriate, and indeed arbitrary, since it would have no basis in the CIT's rules, which set a 30 day rather than a 10 day time limit for filing a Ct. Int'l Trade R. 59(e) motion. A 30 day bright line rule would also be inappropriate: if all motions to modify the judgment that are made within 30 days were considered Ct. Int'l Trade R. 59(e) motions, then Ct. Int'l Trade R. 60(b) would be nullified, since Ct. Int'l Trade R. 60(b) also contains a 30 day time limit. This anomaly does not exist under the *Harcon Barge* decision because Fed. R. Civ. P. 60(b) is not limited to 10 or 30 days; under Fed. R. Civ. P. 60(b), motions must be filed within a "reasonble" time, and certain specified motions must be filed within one year.[11] The analysis in *Harcon Barge* simply does not apply to the CIT rules, and petitioners' claim of a conflict is therefore erroneous.[12]

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[11]As noted on page 3 note 2, *supra*, the CIT has recently amended its Rule 60(b), effective October 1, 1986, to provide time limits that correspond to Fed. R. Civ. P. 60(b), *i.e.*, "reasonable time" and one year. That amendment makes this case particularly inappropriate for review by this Court.

[12]There is an entirely separate reason why this case does not conflict with *Harcon Barge*: even if the CIT erred in interpreting petitioners' motion as one under Ct. Int'l Trade R. 60, the Commission properly relied on the CIT's ruling, and the narrow "unique circumstances" exception of *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.*, 371 U.S. 215 (1962), and *Thompson* v. *INS*, 375 U.S. 384 (1964), therefore applies. In *Harris Lines*, appellant's counsel had obtained from the district court a timely extension of the filing date for appeal on grounds of excusable neglect. The court of appeals dismissed the appeal, ruling that the district court's decision on excusable neglect was erroneous. This Court reversed, noting the "obvious hardship" to a party who relies on the trial court's ruling. The Court stated (371 U.S. at

2. Moreover, the court of appeals' decision that petitioners' motion was not under Ct. Int'l Trade R. 59(e), and therefore did not nullify the Commission's notice of appeal, was correct. First, the CIT explicitly ruled that petitioners' motion was a Ct. Int'l Trade R. 60 motion, rather than a Ct. Int'l Trade R. 59(e) motion (App., *infra*, 1a). Since the CIT was interpreting its own rules, its determination that the motion in question was not one under Ct. Int'l Trade R. 59(e) was entitled to deference by the Federal Circuit.[13] It is of course not dispositive that petitioners characterized their motion as one under Ct. Int'l Trade R. 59(e), since a court may properly go behind the label placed on a motion by the movant and examine the substance of a motion, particularly where the label has collateral consequences. See, *e.g.*, *United States* v. *1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984); *Miller* v. *Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983).

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217) that "[w]hatever the proper result as an initial matter on the facts here, the record contains a showing of unique circumstances sufficient that the Court of Appeals ought not to have disturbed the motion judge's ruling." In *Thompson*, the district court had erroneously informed appellant that his new trial motion was timely. When that motion was denied, appellant's appeal was dismissed as untimely. Again this Court reversed. Relying on *Harris Lines*, the Court noted (375 U.S. at 387) that "[h]ere, as there, [appellant] relied on the statement of the District Court and filed the appeal within the assumedly new deadline but beyond the old deadline." The unique circumstances exception also applies in the present case. The CIT explicitly ruled that petitioners' motion was one under Ct. Int'l Trade R. 60. It was in reliance on that ruling that the Commission did not file a second notice of appeal.

[13]Courts of appeals generally defer to the district court's interpretation of its own local rules, unless the rule or its construction conflicts with the Constitution, a statute, or the Federal Rules of Civil Procedure. See *e.g.*, *John* v. *Louisiana*, 757 F.2d 698, 707 (5th Cir. 1985); *Miranda* v. *Southern Pacific Transportation Co.*, 710 F.2d 516, 521 (9th Cir. 1983); *Smith* v. *Ford Motor Co.*, 626 F.2d 784, 796 (10th Cir. 1980), cert. denied, 450 U.S. 918 (1981). Similarly, the CIT is entitled to deference when it interprets its own rules.

Second, it is fundamental that "[m]otions to alter or amend the judgment are those which call into question the correctness of a judgment on some material point of fact or law, and may properly be cast in the form of a motion to reconsider, to vacate, to set aside, for reargument or for rehearing." *St. Paul Fire & Marine Ins. Co.* v. *Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982) (citing extensive authority); accord, *e.g.*, *FCC* v. *League of Women Voters*, 468 U.S. 364, 373 n.10 (1984) (quoting *Department of Banking* v. *Pink*, 317 U.S. 264, 266 (1942)) ("[T]he rule requiring suspension of a judgment's finality for purposes of appeal during the pendency of a post-judgment motion for reconsideration applies only when such a motion actually seeks an 'alteration of the rights adjudicated' in the court's first judgment."); *Miller* v. *Transamerican Press, Inc.*, 709 F.2d at 527 (citation omitted) (" 'alter or amend' means a substantive change of mind by the court").[14]

Petitioners' motion did not seek a substantive change of mind by the CIT. Rather, the motion sought only to set a time limit by which the Commission had to act on remand.[15]

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[14]It is important to limit the scope of Rule 59(e) motions because of the possibility of abuse to delay appeals. The potential for abuse is greater under a 30 day rule (like the CIT Rule) than under a 10 day rule. One court has noted, in discussing Fed. R. Civ. P. 59(e), that "[t]he possibilities of abusive use of post-judgment motions to delay appeal are slight since 10 days is a short time and cannot be extended." *Western Industsries, Inc.* v. *Newcor Canada, Ltd.*, 709 F.2d 16, 17 (7th Cir. 1983)(citation omitted). A 30 day period poses a greater risk of abuse.

[15]The fact that petitioners' motion requested the CIT to hold the case to ensure that the CIT's order was carried out (see Pet. 6-7 & n.9; Pet. App. 47a) does not change the analysis. It would obviously be inappropriate to permit the party who achieved a victory in the lower court—and who is therefore not calling into question the correctness of the judgment—to delay the time for filing an appeal, and render a previously filed notice of appeal void, simply by asking the court to hold the case until the court's order is implemented.

Petitioners had achieved victory in the CIT and clearly were not calling into question the correctness of the ruling on any point of law or fact. The motion, therefore, was not one under Ct. Int'l Trade R. 59(e),[16] and the rulings of the CIT and the Federal Circuit were correct.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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*United States International Trade Commission*

AUGUST 1986

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[16]Indeed, it is not even clear whether the motion should be characterized as one under Ct. Int'l Trade R. 60, since it does not seem to fall squarely into any of the categories specified in Rules 60(a) or 60(b). For that reason, even if the CIT's rules *were* identical to the Federal Rules of Civil Procedure, it is not at all clear that there would be a conflict with *Harcon Barge*. That case only governs motions that could be construed as *either* Fed. R. Civ. P. 59(e) or 60(b) motions, not those that arguably fit within neither category.

## APPENDIX

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: HONORABLE JAMES L. WATSON

| | | |
|---|---|---|
| Armstrong Rubber Co., Inc., *et al.*, | ) | Court No. 84-10-01444 |
| Plaintiffs | ) | |
| v. | ) | |
| United States, | ) | |
| Defendants. | ) | |

**ORDER**

Upon consideration of the motion by Plaintiffs for alteration of the judgment entered by this Court on August 8, 1985, in the above-captioned matter, and the opposition thereto by Defendant and Intervenors, it is hereby:

ORDERED that Plaintiffs' motion be, and the same hereby is, treated as a motion under Rule 60 of the Rules of this Court; and it is further

ORDERED that Plaintiffs' motion be, and the same hereby is, denied.

/s/ JAMES L. WATSON

JUDGE

Dated: September 18, 1985
New York, New York